In the High Court of Punjab and Haryana at Chandigarh

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C.W.P. No. 19457of 2005
Date of decision:.11-2-2008

Kaka Singh .....Petitioner

Vs.

The State of Punjab and others .....Respondents

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Coram: **Hon'ble Mr. Justice K.S.Garewal**
Hon'ble Ms. Justice Daya Chaudhary

Present: Mrs. Sushma Chopra, Advocate,
for the petitioner.

Mr.J.S.Bhandhol, Advocate,
for respondent No.5

Mr. S.S.Salar, Advocate,
for respondent No.6

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K.S.GAREWAL, J.

Kaka Singh petitioner was owner of khasra No. 3//21/2(6-6) in Bad Majra, Tehsil Kharar, District Ropar. He wanted to exchange this land with Gram Panchayat because there was a drain outside his boundary wall. The drain was in panchayat land which was a path and damage was being caused to his wall and gate by the said drain.

The petitioner applied to Tehsildar, Mohali for determination of the value of the two parcels of land, which were to be exchanged. Tehsildar determined the value at Rs.15 lacs per acre. Gram Panchayat passed resolution on January 10, 2000 agreeing to exchange the land. The

petitioner has referred to Rule 5 of the Punjab Village Common Land (Regulation) Rules, 1964 regarding exchange of land. Exchange of land under this Rule was permitted if the panchayat was of the opinion that it was necessary for the benefit of the inhabitants of the village and prior approval of the Government is also taken. After a great deal of correspondence the proposal submitted by the panchayat was accepted by the Governor and the exchange of land was allowed. This order is Annexure P-5 dated July 30, 2001.

After 2 years one Ujjagar Singh and two others complained that the petitioner's son Gurmeet Singh was a member of the panchayat which had got the land exchanged, by concealing his own personal interest. An inquiry was conducted and on its basis an order was passed by the Government on October 20, 2005 Annexure P-6 cancelling the earlier approval granted by the Governor vide Annexure P-5.

The petitioner has challenged the order Annexure P-6 by asserting that there was no misrepresentation or fraud on his part. He had in fact parted with double the land of superior quality, the inquiry against him had been conducted behind his back. The cancellation of the approval granted was illegal.

Notice of motion was issued to the respondents who put in appearance. The Gram Panchayat appeared and filed a written statement stating that the exchange was in public interest, the matter had been duly considered by the panchayat and no loss was caused to the interest of the panchayat. The complaint against the petitioner had been a motivated one. The contents of the petition were admitted and it was prayed that the writ petition be allowed.

However, Sukhwinder Singh and three others, who had been impleaded as respondents No.6 to 9 on May 12, 2006, contested the petitioner's case and opposed the exchange of land. They pleaded that they had made a complaint on November 12, 2003 against the exchange alleging that it had been got approved by the petitioner's son Gurmeet Singh who wa a member of the Panchayat.

The substance of the private respondents' objection was that the exchange would lead to the width of the path getting reduced and would also cause unnecessary problems to the villagers.

On July 26, 2007 a direction was passed by this Court appointing a Local Commissioner to locate the two parcels of lands which were to be exchanged and to see if the exchange was going to cause any hurdle or hindrance to the flow of traffic or movement of people.

The Local Commissioner reported that the exchange would not cause any such hurdle or hindrance. On the other hand, if the road was paved/metalled by the Gram Panchayat, it shall further facilitate the movement of traffic from all sides. The Local Commissioner furnished a detailed report after inspecting the spot, locating the two plots which were proposed to be exchanged, joining the sarpanch and respondents No. 6 to 9 at the time of spot inspection. The Local Commissioner had also attached photographs of the plot and the various locations of the views from the different angles.

We find that the report of the Local Commissioner is an extremely thorough and detailed report. He found that the exchange was not causing any hurdle or hindrance to the flow of the traffic or movement of the people. Therefore, we accept the report of the Local Commissioner. We

are also of the view that the exchange would benefit the panchayat because the panchyat would get double the land in exchange and would be able to use this land to widen the road at the spot.

Consequently this petition is allowed. Order Annexure P-6 is hereby set aside and order Annexure P-5 is restored.

(K.S.GAREWAL)
JUDGE

(DAYA CHAUDHARY)
JUDGE

February 11, 2008
RSK

NOTE: Whether to be referred to the Reporter or not?